

Sen. Kinnaird introduced Carl Fox, Senior Resident Superior Court Judge of District 15B. Judge Fox was District Attorney for 20 year; assistant prosecutor for 6 years ad judge almost four years.

Judge Fox starts with the premise that the State should not be executing people who are mentally ill.

Judge Fox gave an overview of how capital procedures proceed.

The first step is the Rule 24 hearing when the judge determines whether the case can proceed capitally - based on mental competence. Next is the guilt/innocence phase. Evidence of diminished capacity can be presented in this phase or in the sentencing phase.

(Attachment F) (Sen. Kinnaird referred members to a handout in their packet)

This law would introduce a hearing before the trial, similar to the Rule 24 hearing, when evidence can be presented as to whether or not the person suffers from a severe mental illness and whether the case can proceed as a capital trial.

Judge Fox discussed several examples.

This bill would save a lot of time and money because of the appeals and length of appeals. This procedure would make sense and would provide protection for people who have severe mental disorders.

Judge Fox discussed the unlikelihood of anyone being able to fake a severe mental illness.

Rep. Stiller:

In rule 24, can the judge determine to go forward or not to go forward because of mental illness?

No, they cannot, the Rule 24 hearing is based only on aggravating factors. If one aggravating factor is present, the judge must rule the case must go forward as a capital crime.

Stiller:

After the defendant is found guilty, the jury can come back with a variety sentences

No, just two sentences, life imprisonment or death.

Stiller: At that point, does the jury decide whether or not the person has any mental illness that mitigates the crime?

Yes

Stiller:

If we change this, wouldn't the judge make the determination before the trial rather than having the jury make the determination after the trial?